Supreme Court of the United States

OCTOBER TERM, 1949

No. 364

Automobile Drivers and Demonstrators Local Union No. 882, RALPH REINERTSEN, Its Business Agent, and J. J. ROHAN, Its Secretary, *Petitioners*,

vs.

GEORGE E. CLINE, *Respondent.*

ON CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY BRIEF OF PETITIONERS

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INDEX

TABLE OF CASES

STATUTES

CONSTITUTION

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OPINION OF THE COURT BELOW

The opinion of the Supreme Court of the State of Washington is reported in Volume 133, Wash. Dec. 625; 207 P.(2d) 206 (R. 18).

ARGUMENT

I.

THE COURTS BELOW ENJOINED THE PICKETING SOLELY BECAUSE THERE WAS NO IMMEDIATE EMPLOYER-EMPLOYEE DISPUTE

In our petition for certiorari and supporting brief we asserted that the Supreme Court of Washington in this case held, pursuant to its judicial policy, that the picketing was coercive and unlawful *because there was no immediate employer-employee dispute* and,

being thus unlawful, is not protected by the Fourteenth Amendment. In answer to this the respondent in his brief (p. 10) says:

> "The Washington Supreme Court held the picketing to be coercive and unlawful after it had either set forth in its opinion or alluded to the following:
>
> "A. The scope of the petitioning union's picketing activities. The Court set forth portions of the respondent's testimony (R. 22).
>
> "B. The nature of the union demands as a condition to removal of its pickets and the fact that the petitioning union demanded that respondent employ a member of the union, such employee to be compensated by being paid seven per cent of all sales made at respondent's place of business, irrespective of whether such sale was made by the employee or by respondent (R. 23).
>
> "C. The circumstances under which respondent joined the petitioning union in 1945. In this connection the Court quoted from the record (R. 20)."

While it is true that the Supreme Court of Washington in its opinion did "allude" to these matters it did not hold that by reason thereof the picketing was coercive and unlawful. On the contrary, it approved and confirmed the findings of the trial court that the picketing was "entirely peaceful, the pickets using neither force nor threatening physical violence or molesting anyone" (R. 7, 96). Concerning this the Washington Supreme Court said:

> "The picketing was peaceful, in that the pickets used neither force, nor threatened physical violence, nor actually molested any persons seeking to enter or leave respondent's place of business.

"The substance of the foregoing statement is contained in the court's findings of fact, and there is no question in our minds but that the court's findings are borne out by the great preponderance of the evidence. The trial court concluded as follows:

" 'That *no labor dispute exists within the meaning of the laws of the State of Washington*, and said picketing is, therefore, unlawful, and the plaintiff is entitled to an injunction, *pendente lite*, restraining and enjoining the same.'

* * * * * * * * * * *

" ' That said picketing was coercive and, therefore, an injunction forbidding the same would not infringe the defendants' right of freedom of speech guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.' " (Emphasis supplied)

The Court then proceeded to consider the petitioners' contentions.

"Appellants contend that a 'labor dispute' was shown to exist in this case between respondent and appellant union, under the definition of that term as found in Rem. Rev. Stat. (Sup.) Sec. 7612-13;[1] that in picketing respondent's place

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[1]This Section of the Washington Anti-Injunction Statute — analogue of the Norris-LaGuardia Act—defines labor dispute:

"When used in this Act, and for the purpose of this act—

(a) *A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade or occupation, or have direct or indirect interests therein;* or who are employees of the same employer; or who are members of the same or an affiliated organization of employers

of business appellant union was merely exercising its right of freedom of speech guaranteed by the first and fourteenth amendments to the constitution of the United States.

"Appellants further contend that the facts of this case do not bring it within the principles announced in *Gazzam v. Building Service Employees International Union*, 29 Wn.(2d) 488, 199 P.(2d) 97."[2]

Answering these contentions and holding the picket-

[2]Certiorari granted by this Court and case docketed as No. 449, October Term, 1949.

or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or association of employers; or (3) between one or more employees or association of employees and one or more employers or association of employees; or when the case involves any conflicting or competing interests in a 'labor dispute' (as hereinafter defined) of 'persons participating or interested' therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which dispute occurs, or has a direct or indirect interest therein or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, *regardless of whether or not the disputants stand in the proximate relation of employer and employee.*" (Emphasis supplied)

ing "coercive" and not protected by the Federal Constitution, the court said:

> "We are of the opinion this case is controlled by the principles announced in the *Gazzam* case, *supra*. We are of the opinion that the testimony is undisputed that at the time this action was commenced, at which time respondent's place of business was being picketed by appellant union, respondent was not a member of appellant union, and had not been since the time appellant union had started to picket his place of business, namely, the Saturday before Labor Day of 1947; that respondent was not a member of the Association, and had not been since April, 1947, and was not a party to the contract entered into between appellant union and the Association in April of 1948; *that respondent did not have in his employ at the time this action was commenced, nor had he ever had in his employ, a member of appellant union.*
>
> *"We are firmly of the opinion that the picketing in this case was coercive, and, being coercive, is not protected by the statutes nor by the state or Federal constitutions."* (Emphasis supplied)

Thus it is plain that the picketing was held to be coercive not because of (a) the scope of the picketing activities, (b) the Union's demands as a condition to removal of the pickets, or (c) the circumstances under which respondent joined the Union in 1945, but solely because *the respondent did not have in his employ a member of the Union* and at the time this action was commenced he was not himself a member of the Union and was not bound by any contract with the Union.

If respondent had employed a *single* member of the

Union the Washington court under its well established policy would have held the picketing lawful, regardless of the fact that respondent himself was not a member of the Union and was not bound by any contract with the Union. In *Wright v. Teamsters Union Local No. 690*, 133 Wash. Dec. 869, 207 P.(2d) 662 (decided only twenty-one days after its decision in the present case) the Supreme Court of Washington, in an *en banc* decision, held that peaceful picketing, for the purpose of inducing the plaintiffs to keep their market closed on Sundays, was lawful, where the plaintiffs, a copartnership, employed a single member of the Union. The court there said:

> "The decisions of which the *Gazzam* and *Swenson* cases, *supra*, are the prototypes, are consequently not applicable to this situation. Those cases hold only that peaceful picketing of an employer's place of business is unlawful where the employees are not members of the picketing union, and where the purpose of the picketing is to force the employees to join the union or to compel the employer to enter into a contract which would, in effect, compel his employees to become members of the union. In the instant case, on the other hand, Owens being a union member, the union had a clear right to proceed against Wright in order to persuade him to enter into an agreement with it whereby Owens would be working under the same conditions as other union members in the Pasco vicinity."

In *Berger v. Sailors Union of the Pacific*, 29 Wn. (2d) 810, 189 P.(2d) 473, which followed the *Gazzam* case, *supra*, the union picketed a vessel for the purpose of unionizing its crew. It appeared that only four of

its crew were members of the Union. The court held that this established the existence of a labor dispute, saying:

> "The facts recited above established the existence of a labor dispute, hence injunction will not lie to prohibit respondent labor Union and its members from peacefully picketing appellant's motorship GARLAND for the purpose of completely unionizing that vessel's crew, of which four were members of the Union."

And one of the judges in a concurring opinion significantly added:

> "Certain members of the crew of the MS GARLAND being members of the Union, there was, under our decisions, a labor dispute."

In *Weyerhaeuser Timber Company v. Everett District Council etc.* (1941) 11 Wn.(2d) 503, only 12 employees out of 1278 were members of the Union. Holding that a labor dispute existed and that the picketing was lawful, the court said at page 506:

> "Contending that no labor dispute existed, appellant relies upon our decisions in *Safeway Stores v. Retail Clerks' Union*, 184 Wash. 322, 51 P.(2d) 372; *Fornili v. Auto Mechanics' Union, etc.*, 200 Wash. 283, 93 P.(2d) 422; and *Shively v. Garage Employees Local Union No. 44*, 6 Wn.(2d) 560, 108 P.(2d) 354. *In those decisions, the court held that a labor dispute does not exist unless there is a master and servant relationship between the strikers and the proprietor of the struck shop.* Obviously, the decisions have no application here, for such employer-employee relationship did exist between appellant and its employees who were members of Local 2653. The fact that they constituted a small minority make

> their controversy with appellant none the less a labor dispute." (Emphasis supplied)

And one of the judges concurring in the result observed at page 538:

> "In *Safeway Stores v. Retail Clerks' Union*, 184 Wash. 322, 51 P.(2d) 372 (decided November 8, 1935), *Adams v. Building Service Employees Union*, 197 Wash. 242, 84 P.(2d) 1021 (decided December 6, 1938), *Fornili v. Auto Mechanics*, 200 Wash. 283, 93 P.(2d) 422 (decided August 21, 1939) and *Shively v. Garage Employees Union*, 6 Wn.(2d) 560, 108 P.(2d) 354 (decided December 12, 1940), we held (contrary to statute, Rem. Rev. Stat. (Sup.) Section 7612-1 (P.C. Sec. 3467-21), defining a 'labor dispute') that peaceful picketing of the place of business of an employer by a union which does not include in its membership any employee of such employer, for the purpose of persuading or coercing such employees to join a union against their will, is unlawful and may be enjoined."

The foregoing, in addition to what we have already said in our brief in support of the petition for certiorari at pages 23-25, demonstrates beyond all doubt that when the Supreme Court of Washington in the *Gazzam* case expressly overruled *O'Neil v. Building Service Employees Union*, 9 Wn.(2d) 507, 115 P.(2d) 662, and *S & W Fine Foods v. Retail Delivery Etc. Union*, 11 Wn.(2d) 262, 118 P.(2d) 962, it deliberately refused to be longer bound by the decisions of this Court construing the Federal constitution and reverted to its former policy which forbids "resort to peaceful persuasion through picketing merely because there is no immediate employer-employee dispute."

(*American Federation of Labor v. Swing*). It may be said that this is our prejudiced view. But it was also the considered and frank opinions of the trial judges who tried this and the *Hanke* case (309). In the latter case the trial judge (McDonald) said in his memorandum decision (record *Hanke* case, pages 97-98):

> "The plaintiffs rely upon the recent case of *Gazzam v. Building Service Employees International Union, Local 262*, 129 Wash. Dec. 455, decided by the Supreme Court on December 22, 1947. In that case the plaintiff was the owner of a hotel and had fifteen employees consisting of an engineer, janitor, bell boys, clerks and a housekeeper. None of these employees belonged to the defendant union. There was no dispute between the owner of the hotel and his employees regarding wages, hours or conditions of employment.
>
> "In interpreting section 7612-13, subsection (c), Rem. Rev. Stat., known as the anti-injunction act of 1933, our Supreme Court had consistently held that there was no labor dispute within the meaning of that act where no member of the picketing union was an employee of the employer. Despite contrary holdings in the federal courts in construing the Norris-LaGuardia Act, in 1935 our court first announced this rule in the case of *Safeway Stores v. Retail Clerk's Union, Local No. 148*, 184 Wash. 322. By a divided bench our supreme court refused to depart from this construction in a long number of cases which are set out in the *Gazzam* case, down to July 24, 1941. In that year the case of *O'Neil v Building Service Employees International Union, Local No. 6*, 9 Wn.(2d) 507, was decided, and peaceful picketing was thereafter permitted, irrespective of the

employer-employee relationship. However, this holding was not assented to by all of the supreme court judges.

"On February 10, 1941, the United States Supreme Court, in the case of *American Federation of Labor v. Swing*, 312 U.S. 321, 61 S. Ct. 568, held that the constitutional guaranty of freedom of discussion is infringed by the judicial policy of a state to forbid resort to peaceful persuasion through picketing where there is no immediate employer-employee dispute. The effect of the ruling was to hold that a labor union could peaceably convey to the public at large the information that a certain business has been by labor unions declared unfair, and that as long as the picketing was peaceful, it could not be enjoined because there was no immediate labor dispute. After this decision by the supreme court of the United States, our supreme court, by a divided court, as I have stated, held in the *O'Neil* case that the ruling of the United States Supreme Court in the *Swing* case, being a ruling on the construction of the United States constitution, was binding on them and held that the defendant union was justified in picketing an employer who had no employees. This rule was followed up until the *Gazzam* case, referred to above. In that case by a divided court and by reasoning which I find somewhat difficult to follow, our supreme court reverted to the earlier rule of the *Safeway Stores* case, *supra*, as we have seen. It has generally been considered by the bar that the constitution of the United States is what the supreme court of the United States says it is.

"Whether the holding of the Swing case is what the law ought to be, or whether the holding in the Gazzam case is in reality an overruling of the supreme

court of the United States by a state supreme court upon a construction of the constitution of the United States, by which the state supreme court is bound, is, of course, not for me to say. I am sworn to enforce the law as laid down in the statutes and constitution and as interpreted by the courts of higher resort. **The last expression of our supreme court on this question is found in the Gazzam case, and I must assume that I am bound to follow the holding of that case until it be reversed by the supreme court of the United States or changed by our supreme court, and under the holding of the Gazzam case there can be no question in my mind that the plaintiffs, having no employees represented by the defendant union, or any employees whatsoever, are entitled to have the picketing enjoined. I must bow to the superior wisdom of the majority of the appellate court of this state."** (Emphasis ours)

Judge Batchelor, who tried the case at bar (No. 364), concurred in the foregoing views of Judge McDonald, saying:

"* * * I have read the able opinion of Judge McDonald in the case of *Hanke v. International Brotherhood of Teamsters*, and I concur in the views expressed in his opinion. I concur in his view that the recent *en banc* decision of the Supreme Court of this state in the case of *Gazzam versus Building Service Employees' Union*, 129 Washington Decisions 455, is binding upon the Superior Courts of this state and is controlling in this case as well as the *Hanke* case." (R. 89)

"* * * Peaceable picketing, in my opinion, under the decisions of the Supreme Court, prior to the *Swenson* and *Gazzam* cases, was lawful and not subject to injunction, even though it was coercive in nature.

"Under the decisions in the latter cases, it seems that all picketing is subject to injunction if it is in any nature or any wise coersive. While I find that the picketing here in question in the case at bar violated no statute, was and is free from violence, threats of violence, intimidation or interference with any workers or employees of the plaintiff, it is my duty and I am constrained to hold that, under the decision in the *Gazzam* case and the *Swenson* case, the plaintiff is entitled to a temporary injunction, irrespective of my personal views concerning peaceful picketing." (R. 93)

II.

PETITIONERS DO NOT QUESTION THE STATE'S POWER TO IMPOSE REASONABLE LIMITS UPON THE RIGHT TO PICKET

The Constitution, of course, does not prevent the states from adopting legislation which reasonably regulates or limits the right to picket. Thus legislation limiting the right to picket to the area of the dispute, *Carpenters & Joiners Union v. Ritter's Cafe*, 315 U.S. 722, 86 L. Ed. 1143, 62 S. Ct. 807, does not infringe the Fourteenth Amendment. Nor does a city ordinance which forbids the use of sound amplifying equipment emitting "loud and raucous noises" on the streets. *Kovacs v. Cooper*, 336 U.S. 77, 93 L. Ed. 379, 69 S. Ct. 448. But "it does not follow that the State in dealing with the evils arising from industrial disputes may impair the effective exercise of the right to discuss freely industrial relations which are matters of public concern." *Thornhill v. Alabama*, 310 U.S. 88, 84 L. Ed. 1093, 60 S. Ct. 736.

The legislature of the state of Washington has not seen fit to limit the right to picket to those instances involving employer-employee disputes. On the contrary, in the state's anti-injunction law, it has forbidden the courts of the state to issue injunctions in a labor dispute and, in defining the term "labor dispute", has included those instances where the disputants do *not* stand in the proximate relation of employer and employee. The judicial organ of the state, however, has ignored the statutory definition and has arbitrarily excluded "working men in a particular industry from putting their case to the public in a peaceful way 'by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him.' *American Federation of Labor v. Swing*, 312 U.S. at 326, 85 L. Ed. 857, 61 S. Ct. 568." *Cafeteria Employees Union Local 302 v. Angelos*, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

III.

THE PICKETING WAS NOT UNLAWFULLY EXERCISED

Conceding that the picketing was entirely peaceful, the respondent argues, nevertheless, that it was "coercive" because:

(1) The pickets noted the motor vehicle license numbers of the cars which entered respondent's used car lot; and

(2) They obstructed the driveway to his lot.

The purpose of noting the license numbers was to ascertain if any of respondent's prospective customers

were members of the Teamsters Union and those found to be members were merely reprimanded (R. 64). The Union did not even attempt to communicate with non-members which, of course, it had a right to do. It would have been perfectly lawful for the Union to write to anyone doing business with the respondent, inform him of the nature of the dispute and request him not to patronize the respondent. It is very significant that although the picketing continued for eight months the respondent did not call a single customer or prospective customer to testify that he was in the least "coerced" or "intimidated" by the taking of his license number or by any other activity of the pickets.

The respondent testified that he had to close one of the entrances to his used car lot to avoid injuring pickets who stood there when cars were attempting to enter or leave his premises. While petitioners called no witness to contradict this testimony, the circumstances established it as fantastic: The record shows that there are two driveways or entrances leading to respondent's used car lot, each of which crosses the sidewalk, one at each end. He claims he closed one of them to avoid injuring the pickets! If the pickets were actually trying to block his driveways, closing one driveway would not solve the problem, because they could still stand at the other driveway and subject themselves to injury. But respondent continued to use his other driveway without interference and the picketing continued as before. Respondent offered no explanation in the court below nor does he here.

Furthermore, had the pickets actually engaged in any activity which was actually coercive or unlawful,

that alone should have been enjoined—not *all* picketing. *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U.S. 287. The decree which the Supreme Court of Washington affirmed permanently enjoined the petitioners from "in any manner picketing plaintiff's place of business" (R. 16). It was as unrestricted as that which this Court "found to transgress state power" in *American Federation of Labor v. Swing*, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568, and in *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

In *Cafeteria Employees v. Angelos, supra*, the plaintiffs were copartners who operated a cafeteria without outside help. The Union picketed in an "attempt to organize it." It appeared that the pickets told prospective customers that the cafeteria served bad food, and that in patronizing it, "they were aiding the cause of Fascism" and they "insulted customers who were about to enter" the cafeteria. Under these circumstances it was contended that the picketing was unlawful, although otherwise orderly and peaceful, and the courts below had enjoined the Union from *all* picketing. Answering this contention and reversing the judgment, this Court said at page 295:

> "That the picketing under review was peaceful is not questioned. And to use loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies—like 'unfair' or 'Fascist'—is not to falsify facts. In a setting like the present, continuing representations unquestionably false and acts of coercion going beyond the mere influence exerted by the fact of picketing, are of

course not constitutional prerogatives. *But here we have no attempt by the state through its courts to restrict conduct justifiably found to be an abusive exercise of the right to picket. We have before us a prohibition as unrestricted as that which we found to transgress state power in American Federation of Labor v. Swing*, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568, *supra*." (Emphasis supplied)

But here there is not a syllable of evidence in the record that any one was actually "intimidated" or "coerced" by any of the picket's activities. If the picketing was "coercive" this was so only because Union members and friends of Union labor refused to do business with the respondent. This, however, did not render it unlawful. The avowed purpose of peaceful picketing is to deprive a non-union concern of union business and patronage. No authority has been called to our attention holding that peaceful picketing will be restrained when it is effective but not when it is ineffective. Obviously, when picketing ceases to be effective no injunction is required to stop it. When advertising brings no results the advertiser soon ceases throwing away his money, and so it is with labor unions. The constitutional guaranty of freedom of speech, however, protects the effective as well as the ineffective exercise of the right.

IV.

THE PURPOSE OF THE PICKETING WAS ENTIRELY LAWFUL

In his brief the respondent concedes that on August 30, 1947, he was a member of the petitioning Union and also a member of the Dealers Association and, as such, was bound by contracts which obligated him to close on Saturdays, and that on that date, while said contracts were still in full force and effect, he began keeping his place of business open on Saturdays. He further concedes that on that day the Union began the picketing complained of which continued, without interruption, until enjoined by the court in this action on May 25, 1948—nine months later. He argues, however, that the purpose of the picketing when the action commenced was not the same as when the picketing began. It is suggested that prior to April, 1948, the picketing was for the purpose of compelling respondent to observe the terms of a binding contract, but when respondent commenced this action that contract had terminated and *the dispute had ended;* and that the Union was then picketing to compel respondent to observe the terms of a new contract to which he was not a party and which would require him to employ a Union salesman and close his place of business at 1:00 P.M. on Saturdays.

If the breaching of respondent's contract created a labor dispute that dispute did not end when the Union and the Dealers Association, of which respondent was formerly a member, entered into a new contract. The reasoning of this Court in *Milk Wagon Drivers Union v. Lake Valley Farm Products,* 311 U. S. 91, 85 L. Ed.

63, 68, we believe, sustains this position. The Court, speaking through Mr. Justice Black, there said at page 99:

> "Nor does the controversy cease to be a labor dispute, as the Circuit Court of Appeals thought, because the plaintiff Dairies' employees became organized. This merely transformed the defendants' (union) activities from an effort to organize non-union men to a conflict which included a controversy between two unions."

The new contract between the Dealers Association and the Union was signed on the 14th day of April, 1948. Prior thereto there had been no communication between the parties looking to a settlement of the dispute. Shortly thereafter and about a month before he commenced his action the respondent, upon learning that the new contract required Union salesmen to work on Saturdays until 1:00 P.M., phoned the Union, stating that he was "interested in getting rid of the picket line" and that he would like to discuss the matter. The following day the Business Agent, petitioner Reinertsen, called on respondent and showed him the new contract (R. 48). In reply to respondent's inquiry Reinertsen told him that the dispute could be settled if he complied with this contract. (Reinersten's testimony concerning this matter is quoted by respondent at page 8 of his brief and will not be repeated here.) This interview was no doubt solicited by the respondent for the purpose of laying the foundation for this action which he commenced shortly thereafter. During the previous eight months he had made no effort to obtain injunctive relief, evidently realizing that the picketing of his business

under the circumstances was entirely lawful. During all of that time he kept open all day on Saturdays while members of the Dealers Association, some of whom employed members of the Union, pursuant to their contract, were required to close. For obvious reasons during that period (when all other dealers were closed on Saturdays) respondent was able to do a profitable business in spite of the picketing. When, however, in April, 1948, the new contract between the Dealers Association and the petitioning Union became effective, permitting opening on Saturdays until 1:00 P.M. (which condition respondent's conduct had forced upon the Union) his business naturally fell off, although he kept open all day on Saturdays. Thereupon he immediately tried to get back into the Union, as it has a right to do, refused to readmit him he commenced this action, and is now trying to make it appear that the Union is "demanding" that he sign a contract to which he was not a party.

Respondent would like to rejoin the Union, which he admittedly betrayed, and operate his business as before—without employing a Union salesman. The Union, as it has a right to do, refused to admit him to membership, but offered to withdraw the pickets if he would sign the identical contract which all members of the Dealers Association, who are not members of the Union, have signed. He claims he can not afford to employ a Union salesman and pay him a seven per cent commission which the other Dealers have agreed to do, but the record shows that he is one of the larger dealers in the Seattle area (R. 36, 60, 74), and he has shown no reason why he can not compete with other

dealers whose businesses are smaller than his. He says in his brief that some dealers who are members of the Union are privileged to do business without employing a Union salesman and that this privilege is now denied to him. He argues that this is unreasonable and discriminatory and to picket his place of business under the circumstances is unlawful. Until he violated his solemn obligation to the Union and breached his contract he also enjoyed this right, and if he is now barred from renewing his membership in the Union he has no one to blame but himself. He still has the right, however, to operate a Union shop under the same contract which the Union has with Dealers who are not members of the Union, and he has always had the right to operate a non-union shop. The respondent seeks equity but, as the record plainly shows, he has not done equity and he came to court with unclean hands.

The picketing of respondent's place of business was in furtherance of a perfectly lawful objective.

> *Senn v. Tile Layers Protective Union*, 301 U.S. 468, 57 S. Ct. 857, 81 L. Ed. 1229;
>
> *Bakery & Pastry Drivers, Etc. v. Wohl*, 315 U.S. 769, 62 S. Ct. 816, 86 L. Ed. 1178.

In *Wright v. Teamsters Union Local 690* (decided June 24, 1949), 133 Wash. Dec. 207, the Supreme Court of Washington held that peaceful picketing for the purpose of inducing the proprietors of a market to close on Sundays was a lawful objective. The only difference between that case and this is that there the proprietors had in their employ a *single* member of the

Union. Here and in the *Hanke* case (No. 309) the respondents employed no member of the picketing Union and for this reason alone (although the objective of the picketing was entirely lawful), the Supreme Court of Washington found it "coercive" and "unlawful". This finding, we submit, "is so without warrant as to be a palpable evasion of the constitutional guaranty here invoked." (*Milk Wagon Drivers v. Meadowmoor Dairies*, 312 U.S. 287, 294).

V.

THE CIRCUMSTANCES UNDER WHICH RESPONDENT BECAME A UNION MEMBER ARE IMMATERIAL

Respondent argues that in 1945 he was induced to join the petitioning Union by threats to picket his place of business. While this matter is wholly immaterial to the issues there are two answers: In the first place, this statement is factually untrue. It is true that respondent testified the Union threatened to picket him unless he became a member, but it is not true that he was thereby induced to join. He became a member of the Union only after conferring with and accepting the advice of other used car dealers. Concerning this he testified:

> "Q. Now, when you joined the Union, I understood you to say you talked to some dealers?
>
> A. That is right.
>
> Q. About it, is that right?
>
> A. That is right.
>
> Q. And they told you that if you wanted to do business in Seattle you better join the Union?
>
> A. That's right.

Q. Is that right?

A. That is right.

Q. And after that you did join the Union?

A. After a little pressure was applied by the officials of the Union. (St. 21-22)

* * * * * * * * * * *

"Q. These dealers you talked with were members, were they, of the Union?

A. Some of them were Union members, I believe.

Q. *Mr. Cline, didn't you have a choice at that time of employing one Union salesman or joining the Union yourself?*

A. *That is right.*" (R. 42)

The truth of the matter is that the respondent voluntarily joined the Union rather than employ a Union salesman, and he did this because he realized that in Seattle, where working people are highly unionized, union patronage is essential to any successful business.

In the second place, if any compulsion had been applied by the Union at that time the court house doors were as wide open to respondent then as they were in May, 1948, when he commenced this action. However, the circumstances under which he became a member of the Union in 1945 are not important. The important thing is that he was still a member in August, 1947, when he violated his obligation to the Union and breached the contract which he had made through the dealers association.

CONCLUSION

In conclusion we respectfully submit that the judicial policy of the State of Washington which arbitrarily forbids peaceful picketing where there is no immediate employer-employee dispute violates the Fourteenth Amendment; and that the holding of that court in this case is directly in conflict with the decisions of this Court in the *Swing*, *Wohl* and *Angelos* cases. The decree here under review should, therefore, be reversed.

Respectfully submitted,

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